Carpenters District Council of Will County and Vicinity *and* Mid-America Regional Bargaining Association. Case 13-CB-8611

April 2, 1981

DECISION AND ORDER

On November 19, 1980, Administrative Law Judge David L. Evans issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions, and the Charging Party filed a brief in support of the Administrative Law Judge's Decision and a motion to strike Respondent's exceptions and supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Carpenters District Council of Will County and Vicinity, Will County, Illinois, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the Charging Party's motion to strike Respondent's exceptions and supporting brief be, and it hereby is, denied.

[1] We agree with the Administrative Law Judge that Respondent violated Sec. 8(b)(3) by refusing to bargain concerning the subject of a grievance arbitration procedure. In doing so, however, we disavow the Administrative Law Judge's comment that Respondent "has the Employer by the throat," and that it is "safe to assume that it has, from time to time, squeezed."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which both sides had an opportunity to present evidence, the National Labor Relations Board has found that we have violated the National Labor Relations Act, as amended, and we have been ordered to post this notice and abide by its terms.

WE WILL NOT refuse to bargain with Mid-America Regional Bargaining Association on behalf of the journeymen, carpenters, and apprentices in our territorial jurisdiction who are employed by employer-members of that association, excluding all other employees and supervisors, with regard to the subject of grievance arbitration.

WE WILL NOT in any like or related manner refuse to bargain with Mid-America Regional Bargaining Association.

WE WILL notify Mid-America Regional Bargaining Association that we will, upon request, meet and bargain with regard to the subject of grievance arbitration and, if an agreement is reached, embody such understanding in a written signed agreement.

CARPENTERS DISTRICT COUNCIL OF WILL COUNTY AND VICINITY

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge: A hearing in this proceeding was held on May 8 and 9, 1980, at Chicago, Illinois, based on charges filed on July 18, 1979,[1] against Carpenters District Council of Will County and Vicinity, herein called Respondent or the Union, by Mid-America Regional Bargaining Association, herein called MARBA or the Association. Based on these charges the Regional Director issued a complaint and notice of hearing alleging a violation of Section 8(b)(3) of the National Labor Relations Act, as amended, by Respondent. Respondent duly filed an answer to the complaint admitting jurisdiction and other matters but denying the commission of any unfair labor practices.

The Charging Party and Respondent have filed briefs which have been carefully considered. The General Counsel argued orally at hearing, but did not submit a brief. Upon the entire record and having taken into account the arguments made at the hearing and in the briefs submitted I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Mid-America Regional Bargaining Association is an Illinois not-for-profit corporation engaged in the business of representing employer associations in collective bargaining. During the 12 months preceding the issuance of the complaint herein, in the course and conduct of its operations as a representative for employer associations, MARBA provided services valued in excess of $50,000 for enterprises within the State of Illinois, including the Contractors Association of Will and Grundy Counties,

[1] All dates are in 1979 unless otherwise indicated.

Illinois, the Builders Association of Greater Chicago, Illinois, and the Northwestern Illinois Contractors Association. These three associations have, as members, employers who in the course and conduct of their business operations annually purchase and receive at their facilities in Illinois goods and materials valued in excess of $50,000 from points outside the State of Illinois. The complaint alleges, the answer admits, and I find and conclude that MARBA is an employer engaged in commerce within the meaning of Section 2(6) and (6) of the Act.

II. THE UNION'S LABOR ORGANIZATION STATUS

The complaint alleges, Respondent admits, and I find and conclude that at all times material herein Respondent has been and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The narrow issue herein is whether Respondent failed and refused to bargain in good faith during contract negotiations in 1979 with respect to the subject of grievance arbitration in violation of Section 8(b)(3) of the National Labor Relations Act.

Respondent is the bargaining representative of approximately 750 carpenters who work in Will County, Illinois, and the vicinity thereof. In 1971 MARBA was formed as an association comprised of employer associations which bargain with various construction unions in and around the six-county, two-state, Chicago metropolitan area. Specifically, on behalf of two of its member associations, the Contractors Association of Will and Grundy Counties and the Chicago Outerbelt Contractors Association, MARBA has negotiated successive collective-bargaining agreements with Responent since 1972. The last agreement before the circumstances of this case was signed in 1976 and expired on May 31, 1979. Neither this agreement nor any of its three precedessors contained a binding arbitation provision or a no-strike clause.[2]

Heading MARBA's 1979 negotiating team was Charles Reinhart, a labor relations consultant who was usually assisted by William McCabe, an officer in MARBA and the negotiating team recording secretary, and Paul Cocose and Arnold Pedersen who head Chicago area construction firms and who were members of the committee. Respondent's team was headed by George Perinar, president of Respondent, and Gary Perinar (son of George), Donald Lipinski, and Wayne Mueller, union bargaining committee members.

[2] The Association asserts that the absence of an arbitration provision has resulted in numerous strikes over the years and it sought to adduce evidence thereof as a justification for its demand that the Union bargain on the issue of arbitration in the 1979 negotiations. I rejected all such testimony, and the Association urges reconsideration in its brief. Since arbitration is indisputably a mandatory subject of bargaining, the reasonableness of the Association demand is not in issue. Moreover, while there is a veritable myriad of reported cases where a union seeks, and an employer resists, an arbitration provision, there are none where the shoe is on the other foot. The only possible reason for the role reversal herein is that the Union, by virtue of its power of the picket, has the Association by the throat. It is further safe to assume that it has, from time to time, squeezed. I adhere to my ruling.

At the time of the hearing George Perinar had deceased. The testimony adduced at the hearing is that of witnesses called by the General Counsel. Respondent called no witnesses, and there are no issues of fact.

Negotiating Meeting One; May 10: At the initial negotiation session George Perinar stated that the Union wanted parity with the wage gains made by other unions in the area and made other economic demands. Reinhart responded that the Association wanted some "work rules changes," a term which indicated noneconomic items, also. Reinhart stated specifically that it was of paramount importance to the employers that they have a grievance procedure with arbitration provisions. To this proposal George Perinar replied, "Forget it."

Negotiating Meeting Two; May 22: At this meeting George Perinar was not present, nor were Pedersen or Cocose. Gary Perinar represented the Union as Reinhart did, again, represent the Association. At the second meeting as well as other topics were discussed and Reinhart read, but did not distribute any materials reflecting, a proposal banning any cessation of work and provision for binding arbitration. Reinhart stated the need for an arbitration clause three times and upon each occurrence Gary Perinar replied "no way" or "no use talking about it." The third time he made such a response, according to the undisputed testimony of McCabe and Reinhart, Gary Perinar smiled and stated that he was not refusing to bargain on the issue and that it would be considered. The Union submitted a long list of economic demands and made no proposal on grievance arbitration.

Negotiating Meeting Three; May 30: At the third meeting MARBA submitted a package proposal which increased some of the economic offers and dropped some of the work rule changes requested, but continued in the request for an arbitration and no-strike clause. The Union rejected the offer in the entirety, not singling out the grievance arbitration issue for any comment; nor was there any specific comment by MARBA regarding arbitration.

Negotiating Meeting Four; June 29: At the fourth meeting MARBA reiterated its May 30 package proposal which George Perinar rejected in its entirety, making no specific statement regarding arbitration. The Union submitted a package proposal and, after a brief caucus, MARBA returned with a somewhat modified proposal, but again asserting a demand for arbitration procedure. Again Association proposals were rejected by the Union without specific comment being made by either side about arbitration.

At the June 29 meeting, the Union served notice that it would take a strike vote. On July 2, the Union began a selective strike and MARBA instituted a lockout of all Will County carpenters. The strike continued until August 21.

Negotiating Meeting Five; July 12: Each party made total package proposals, that of MARBA again containing the grievance arbitration provision. The parties rejected each other's proposals without specific comment on any particular provision thereof.

Negotiating Meeting Six; July 23: At this meeting MARBA submitted a package proposal which substan-

tially modified its grievance arbitration proposal. As modified, the proposal provided that, after specified preliminary steps, the matter "may be referred to binding arbitration if both parties agreed." The proposal further provided that, if no agreement to submit to arbitration was reached, the Union could engage in a strike or the Association a lockout provided that 14 days' notice of such action was given to the other party. This proposal was read, but not submitted in writing, to the Union. To this proposal George Perinar replied only that it was the same as that which had been previously submitted; that there was no need for further meetings, that he would ask for the next meeting; and said, "I will call you—don't call me."

Meeting in Washington, D.C.; August 2: This meeting could not precisely be called a "negotiating session"; it was held at the behest of MARBA which sought to invoke the assistance of International representatives of the Carpenters Union in reaching a settlement to the contractual disputes and the ongoing strike. In attendance for MARBA were Pederson, Reinhart, McCabe, Cocose, and several other members of the MARBA board. Respondent was represented by George Perinar and one Mike Nippert, a union officer. The meeting was conducted by William Konyha, senior vice president of the International, and Don Danielson, staff assistant to Konyha. The parties reviewed their economic differences and Reinhart stated that a major point of dispute was the failure to achieve a grievance arbitration procedure. Konyha indicated that he was surprised that the parties did not have arbitration agreement and recommended that one be reached. Perinar made no response. At the end of the meeting Cocose directly asked Perinar: "Now can we go back and negotiate an arbitration and grievance procedure." Perinar replied: "No way."

Negotiating Meeting Seven; August 6: The parties met again and exchanged package proposals, the Company reasserting its voluntary arbitration provision and the Union making no counterproposal on that topic. This time, however, Perinar did state that he "would study" the voluntary arbitration proposal.

Negotiating Meeting Eight; August 20: MARBA again suhmitted a package proposal including the voluntary arbitration provision. McCabe was asked what George Perinar replied to the arbitration proposal and he testified:

> The Union, Mr. George Perinar in particular, said that there was no way we would have a grievance procedure; that it wasn't good for us, it wasn't good for the industry, that it would require monthly meetings which were detrimental, and that, if we were good during the course of the coming contract, he would agree to discuss it at a future date, at the next negotiating round.

The parties dickered back and forth about wages, finally reaching an agreement on economic items and agreement to continue all the "work rules" of the prior agreement, meaning that there was to be no arbitration and no no-strike provision in the contract. The strike terminated the following day.

Conclusions

The Act imposes upon the parties the duty[3] "to enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement." *N.L.R.B.* v. *Herman Sausage Company, Inc.*, 275 F.2d 299, 231 (5th Cir. 1960). As the Supreme Court stated in *N.L.R.B.* v. *Insurance Agents' International Union, AFL-CIO* [*Prudential Insurance Company of America*], 361 U.S. 477, 485 (1960):

> Collective bargaining, then, is not simply an occasion for purely formal meetings between management and labor, while each maintains an attitude of "take it or leave it"; it presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract.

This obligation does not compel either party to agree to a proposal or to make a concession. *N.L.R.B.* v. *American National Insurance Company*, 343 U.S. 395 (1952); specifically, it does not compel agreement to particular proposals no matter how desirable, or even vital, to the other party. *H. K. Porter Co., Inc.* v. *N.L.R.B.*, 397 U.S. 99 (1970). However, the Board may, and does, examine the contents of the proposals and responses, for "if the Board is not to be blinded by empty talk and by the mere surface motions of collective bargaining, it must take some cognizance of the reasonableness of the positions taken by [the parties] in the course of bargaining negotiations." *N.L.R.B.* v. *Reed & Prince Mfg. Co.*, 205 F.2d 131, 134 (1st Cir. 1953), cert. denied. 346 U.S. 887.

Here, Respondent barely gave occasional lip service to the employers' proposal that some method other than utilization of raw economic weaponry be utilized for the purpose of resolving disputes arising during the term of the contract. George Perinar's telling the employers to behave themselves and he would talk about it when the new contract expired is the closest he came to a counterproposal. His responses of "no way," "forget it," or simply "no" were the Union's answers and only real reasons to the proposal, notwithstanding the empty expression of Gary Perinar once that Respondent was not refusing to bargain or George Perinar's later statement that the Union "would study" the Association's proposal. In an apparent attempt to manufacture something to advance as a reasonable basis for his adamant refusal, George Perinar created a specter of monthly meetings; but the "burden" of monthly meetings does not constitute a defense for Respondent's outright refusal to consider the matter. Finally, although in its brief Respondent points out that MARBA never reduced its arbitration clauses to writing, this objection was never raised during the course of bargaining, and it certainly does not constitute a factual or legal defense for the allegation. MARBA was never asked to reduce the matters to writing; from Respondent's cavalier rejection of the principle

[3] The duty to bargain imposed upon labor organizations by Sec. 8(b)(3) is the same as that imposed upon employers under Sec. 8(a)(5). *National Maritime Union of America, affiliated with the Congress of Industrial Organizations, and Joseph Curran, its Agent (The Texas Company)*, 78 NLRB 971, 980 (1948).

of arbitration it is quite apparent that it would have been futile for it to have done so.

I find and conclude that, by its adamant refusal to consider during the 1979 negotiations the Association's grievance arbitration proposal, Respondent violated Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

1. Mid-America Regional Bargaining Association and its members are employers and are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Carpenters District Council of Will County and Vicinity is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees who are employed by members of Mid-America Regional Bargaining Association in Will and Grundy Counties, Illinois, and who are engaged in performing work properly coming under the jurisdiction of the United Brotherhood of Carpenters and Joiners of America as defined in its trade autonomy and established by decisions of record of the building trades department of the American Federation of Labor and/or decisions rendered by the National Joint Board for the Settlement of Jurisdictional Disputes, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Carpenters District Council of Will County and Vicinity at all times material herein has been, and is, exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By refusing to bargain with Mid-America Regional Bargaining Association regarding the subject of grievance arbitration Respondent has since May 10, 1979, engaged in unfair labor practices within the meaning of Section 8(b)(3) of the Act.

6. The aforesaid unfair labor practice is an unfair labor practice within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated Section 8(b)(3) it will be recommended that Respondent be ordered to cease and desist from such conduct and take certain affirmative action in order to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[4]

The Respondent, Carpenters District Council of Will County and Vicinity, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to bargain with Mid-America Regional Bargaining Association on behalf of journeymen and apprentices in its territorial jurisdiction who are employed by employer members of said association, excluding all other employees and supervisors, with regard to grievance arbitration.

(b) In any like or related manner refusing to bargain with Mid-America Regional Bargaining Association.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Respondent Union shall notify Mid-America Regional Bargaining Association that it will, upon request, meet and bargain with regard to the subject of grievance arbitration and, if an agreement is reached, embody such understanding in a written, signed agreement.

Post at Respondent's business office and meeting places, within its territorial jurisdiction, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's authorized representative, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Promptly after receipt of copies of said notice from the Regional Director, return to him, or her, signed copies for posting by Mid-America Regional Bargaining Association and by all of its constituent members, and the employers who comprise the constituent members, the employees of whom Respondent represents, if said employers be willing, at their places of business, including all places where notices to employees are customarily posted.

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[4] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."